

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RANDY M. MAILMAN
Deputy Attorney General
4 State Bar No. 246134
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2442
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation
13 Against:

Case No. 2011-882

14 **NANCY JEAN SCHOENI, AKA NANCY**
15 **JEAN DAMRATH**
16 **13560 E. Sutter Court**
17 **Fontana, CA 92336**
18 **Registered Nurse License No. 224359**

FIRST AMENDED ACCUSATION

Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this First Amended Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
23 Department of Consumer Affairs.

24 2. On or about July 31, 1972, the Board of Registered Nursing issued Registered Nurse
25 License Number 224359 to Nancy Jean Schoeni, aka Nancy Jean Damrath ("Respondent"). The
26 Registered Nurse License was in full force and effect at all times relevant to the charges brought
27 herein and will expire on August 31, 2012, unless renewed.

28 ///

///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4

5
6
7

8
9
0

0

- 1
- 2
- 3
- 4
- 5

6

7
8
9
0

1
2
3
4

25
26
27
28

1 made suspending the imposition of sentence, irrespective of a subsequent order under the
2 provisions of Section 1203.4 of the Penal Code.”

3 7. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
4 any licensee, including a licensee holding a temporary or an inactive license, for any reason
5 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6 8. Section 2761 of the Code provides, in pertinent part:

7 "The board may take disciplinary action against a certified or licensed nurse
8 or deny an application for a certificate or license for any of the following:

9 (a) Unprofessional conduct, which includes, but is not limited to, the
10 following:

11 ...

12 (f) Conviction of a felony or of any offense substantially related to the
13 qualifications, functions, and duties of a registered nurse, in which event the record
14 of the conviction shall be conclusive evidence thereof...”

15 9. Section 2762 of the Code provides, in pertinent part:

16 “In addition to other acts constituting unprofessional conduct within the
17 meaning of this chapter it is unprofessional conduct for a person licensed under
18 this chapter to do any of the following:

19 (a) Obtain or possess in violation of law, or prescribe, or except as directed by
20 a licensed physician and surgeon, dentist, or podiatrist administer to himself or
21 herself, or furnish or administer to another, any controlled substance as defined in
22 Division 10 (commencing with Section 11000) of the Health and Safety Code or
23 any dangerous drug or dangerous device as defined in Section 4022.

24 (b) Use any controlled substance as defined in Division 10 (commencing
25 with Section 11000) of the Health and Safety Code, or any dangerous drug or
26 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
27 or in a manner dangerous or injurious to himself or herself, any other person, or
28 the public or to the extent that such use impairs his or her ability to conduct with
safety to the public the practice authorized by his or her license...”

10. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
licensee or to render a decision imposing discipline on the license.

1 11. Section 2770.11 of the Code provides:

2 (a) Each registered nurse who requests participation in a
3 diversion program shall agree to cooperate with the rehabilitation
4 program designed by the committee and approved by the program
5 manager. Any failure to comply with the provisions of a
6 rehabilitation program may result in termination of the registered
7 nurse's participation in a program. The name and license number of
8 a registered nurse who is terminated for any reason, other than
9 successful completion, shall be reported to the board's enforcement
10 program.

11 (b) If the program manager determines that a registered
12 nurse, who is denied admission into the program or terminated from
13 the program, presents a threat to the public or his or her own health
14 and safety, the program manager shall report the name and license
15 number, along with a copy of all diversion records for that
16 registered nurse, to the board's enforcement program. The board
17 may use any of the records it receives under this subdivision in any
18 disciplinary proceeding."

12 12. Section 4022 of the Code provides that:

13 "Dangerous drug" or "dangerous device" means any drug or device unsafe
14 for self-use in humans or animals, and includes the following:

15 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
16 without prescription," "Rx only," or words of similar import.

17 (b) Any device that bears the statement: "Caution: federal law restricts this
18 device to sale by or on the order of a _____," "Rx only," or words of similar
19 import, the blank to be filled in with the designation of the practitioner licensed to
20 use or order use of the device.

21 (c) Any other drug or device that by federal or state law can be lawfully
22 dispensed only on prescription or furnished pursuant to Section 4006."

23 REGULATORY PROVISIONS

24 13. California Code of Regulations, title 16, section 1444, provides:

25 "A conviction or act shall be considered to be substantially related to the qualifications,
26 functions or duties of a registered nurse if to a substantial degree it evidences the present or
27 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
28 safety, or welfare.

Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in
subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

1 (c) Theft, dishonesty, fraud, or deceit.

2 (d) Any conviction or act subject to an order of registration pursuant to Section 290 of the
3 Penal Code."

4 **DRUG DEFINITIONS**

5 14. **Morphine** – a Schedule II controlled substance pursuant to Health and Safety Code
6 section 11055 subdivision (b)(1)(L) and a dangerous drug pursuant to Business and Professions
7 Code section 4022. It has a high potential for addiction and has a currently accepted but severely
8 restricted medical use in treatment in the United States. Abuse of morphine may lead to severe
9 psychological or physical dependence. Possession of morphine without a valid prescription is
10 punishable as a felony under Health and Safety Code section 11350, subdivision (a). Being under
11 the influence of morphine is punishable as a misdemeanor under Health and Safety Code section
12 11550.

13 **COST RECOVERY**

14 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantially-Related Crime)**

20 16. Respondent is subject to disciplinary action under sections 490 and 2761, subdivision
21 (f) of the Code, as defined in California Code of Regulations, title 16, section 1444, subdivision
22 (c) in that Respondent was convicted of a crime substantially related to the qualifications,
23 functions or duties of a registered nurse as follows:

24 17. On or about March 3, 2008, in the criminal matter entitled *People v. Nancy Schoeni*,
25 San Bernardino County Superior Court Case No. MV700428, Respondent pled no contest to a
26 violation of California Penal Code section 484, subdivision (a), petty theft, a misdemeanor.
27 Respondent was placed on informal probation for two years, ordered to pay fines, and ordered to
28

1 book herself into the county jail to be released immediately.

2 **SECOND CAUSE FOR DISCIPLINE**

3 **(Dangerous Use of Drugs)**

4 18. Respondent is subject to disciplinary action under Code section 2762, subdivision
5 (b), in that Respondent used a controlled substance, to wit, morphine, to an extent or in a manner
6 dangerous or injurious to herself, any other person, or the public or to the extent that such use
7 impairs her ability to conduct with safety to the public the practice authorized by her license. The
8 conduct is more particularly described as follows:

9 a. On or about January 2, 2008, Respondent entered into a contract with the Maximus
10 Diversion Program.

11 b. The contract provided that Respondent would abstain from alcohol and mind
12 altering drugs and that Respondent would submit to biological sample testing for the use of
13 alcohol and drugs.

14 c. On or about February 11, 2008, Respondent tested positive for alcohol.

15 d. On or about April 16, 2008, Respondent tested positive for alcohol.

16 e. On or about April 24, 2008, Respondent tested positive for alcohol.

17 f. On or about April 29, 2008, Respondent tested positive for alcohol.

18 g. On or about May 13, 2008, Respondent tested positive for alcohol.

19 h. On or about August 25, 2010, Respondent tested positive for morphine

20 i. On or about September 2, 2010, Respondent was terminated from the Maximus
21 Diversion program when it was determined that she posed a public health risk.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Administered a Controlled Substance)**

24 19. Respondent is subject to disciplinary action under Code section 2762, subdivision
25 (a), in that Respondent unlawfully administered to herself a controlled substance, to wit,
26 morphine. The conduct is more particularly described in paragraph 18, subparagraphs (a) through
27 (i), inclusive, above, and herein incorporated by reference.

28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 20. Respondent is subject to disciplinary action under Code section 2761, subdivision
4 (a), in that Respondent engaged in unprofessional conduct. The conduct is more particularly
5 described in paragraph 18, subparagraphs (a) through (i), inclusive, above, and herein
6 incorporated by reference.

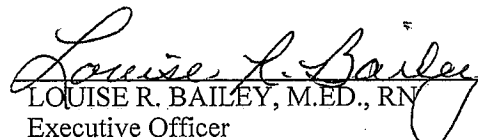
7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 224359, issued to Nancy
11 Jean Schoeni, aka Nancy Jean Damrath;
- 12 2. Ordering Nancy Jean Schoeni, aka Nancy Jean Damrath to pay the Board of
13 Registered Nursing the reasonable costs of the investigation and enforcement of this case,
14 pursuant to Business and Professions Code section 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: _____

5/20/11

17 
18 LOUISE R. BAILEY, M.ED., RN
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant

24 LA2011501841
25 60625543.doc
26
27
28